

Federal Communications Commission

§ 63.16

notice, the Commission will take action upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended. The application shall not be deemed granted until the Commission affirmatively acts upon the application. Operation for which such authorization is sought may not commence except in accordance with any terms or conditions imposed by the Commission.

[62 FR 64753, Dec. 9, 1997, as amended at 64 FR 19063, Apr. 19, 1999; 64 FR 22903, Apr. 28, 1999; 64 FR 43095, Aug. 9, 1999]

§ 63.13 Procedures for modifying regulatory classification of U.S. international carriers from dominant to non-dominant.

Any party that desires to modify its regulatory status from dominant to non-dominant for the provision of particular international communications services on a particular route should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

[62 FR 64754, Dec. 9, 1997]

§ 63.14 Prohibition on agreeing to accept special concessions.

(a) Any carrier authorized to provide international communications service under this part shall be prohibited, except as provided in paragraph (c) of this section, from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and from agreeing to accept special concessions in the future.

NOTE TO PARAGRAPH (a): Carriers may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the prohibitions contained in this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the Inter-

national Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(b) A special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary for the provision of basic telecommunications services where the arrangement is not offered to similarly situated U.S.-licensed carriers and involves:

(1) Operating agreements for the provision of basic services;

(2) Distribution arrangements or interconnection arrangements, including pricing, technical specifications, functional capabilities, or other quality and operational characteristics, such as provisioning and maintenance times; or

(3) Any information, prior to public disclosure, about a foreign carrier's basic network services that affects either the provision of basic or enhanced services or interconnection to the foreign country's domestic network by U.S. carriers or their U.S. customers.

(c) This section shall not apply to the rates, terms and conditions in an agreement between a U.S. carrier and a foreign carrier that govern the settlement of international traffic, including the method for allocating return traffic, if the international route is exempt from the international settlements policy under § 43.51(g)(2) of this chapter.

[62 FR 64754, Dec. 9, 1997, as amended at 64 FR 19063, Apr. 19, 1999; 64 FR 34741, June 29, 1999]

§ 63.16 Switched services over private lines.

(a) Except as provided in §§ 63.22 (e)(2) and 63.23(d)(2), a carrier may provide switched basic services over its authorized private lines if and only if the country at the foreign end of the private line appears on a Commission list of destinations to which the Commission has authorized the provision of switched services over private lines. The list of authorized destinations is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(b) An authorized carrier seeking to add a foreign market to the list of markets for which carriers may provide

switched services over private lines must make the following showing:

(1) If seeking a Commission ruling to permit the provision of international switched basic services over private lines between the United States and a WTO Member country, the applicant shall demonstrate either that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96-261 *or* that the country affords resale opportunities equivalent to those available under U.S. law (see paragraph (c) of this section).

(2) If seeking a Commission ruling to permit the provision of international switched basic services over private lines between the United States and a non-WTO Member country, the applicant shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96-261 that the country affords resale opportunities equivalent to those available under U.S. law (see paragraph (c) of this section).

(c) With regard to showing under paragraph (b) of this section that a destination country affords resale opportunities equivalent to those available under U.S. law, an applicant shall include evidence demonstrating that equivalent resale opportunities exist between the United States and the subject country, including any relevant bilateral or multilateral agreements between the administrations involved. The applicant must demonstrate that the foreign country at the other end of the private line provides U.S.-based carriers with:

(1) The legal right to resell international private lines, interconnected at both ends, for the provision of switched services;

(2) Reasonable and nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carrier facilities for termination and origination of international services, with adequate means of enforcement;

(3) Competitive safeguards to protect against anticompetitive and discriminatory practices affecting private line resale; and

(4) Fair and transparent regulatory procedures, including separation between the regulator and operator of international facilities-based services.

(d) The showing required by paragraph (b) of this section may be made in a Section 214 application filed pursuant to § 63.18 of this part or in a petition for declaratory ruling addressed to the attention of the International Bureau and indicating clearly the name of the party seeking the declaration and the destination points for which the declaration is sought. The Commission will issue public notice of the filing of the request and may, in each case, determine an appropriate deadline for filing comments. Unopposed requests may be granted by public notice.

NOTE 1 TO § 63.16: The Commission's benchmark settlement rates are available in International Settlement Rates, IB Docket No. 96-261, *Report and Order*, FCC 97-280, 12 FCC Rcd 19,806, 62 FR 45758 (August 29, 1997).

[64 FR 19063, Apr. 19, 1999, as amended at 64 FR 34741, June 29, 1999]

§ 63.17 Special provisions for U.S. international common carriers.

(a) Unless otherwise prohibited by the terms of its Section 214 certificate, a U.S. common carrier authorized under this part to provide international private line service, whether as a reseller or facilities-based carrier, may interconnect its authorized private lines to the public switched network on behalf of an end user customer for the end user customer's own use.

(b) Except as provided in paragraph (b)(4) of this section, a U.S. common carrier, whether a reseller or facilities-based carrier, may engage in "switched hubbing" to countries for which the Commission has not authorized the provision of switched basic services over private lines provided the carrier complies with the following conditions:

(1) U.S.-outbound switched traffic shall be routed over the carrier's authorized U.S. international private lines to a country for which the Commission has authorized the provision of switched services over private lines